

**ORIGINAL**

Before the **DOCKET FILE COPY ORIGINAL**  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**

JAN 14 1998

In the Matter of )  
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Amendment of the Commission's )  
Rules Regarding Installment Payment )  
Financing For Personal Communications )  
Services (PCS) Licensees )  
 )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WT Docket No. 97-82

**PETITION FOR RECONSIDERATION**

**Introduction**

MFRI Incorporated ("MFRI") respectfully requests reconsideration of certain aspects of the Second Report and Order in the above-captioned proceeding.<sup>1</sup> We believe that the *Second Report and Order* should be modestly adjusted to allow full use of one's down payment to prepay any Entrepreneurs' block license and to remove all merely punitive aspects to it.

MFRI is a small business which holds C- and F-block PCS licenses in the Stroudsburg, PA Basic Trading Area ("BTA") and the F-block license in the Pottsville, PA BTA. As one of the smaller entrepreneurial companies that obtained licenses through the C and F block auctions, we feel we can provide useful comments and perspective regarding C block restructuring.

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<sup>1</sup> Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("*Restructuring Order*," "*Further Notice*").

**FCC Should Enforce Its Collusion Rules Uniformly And Investigate Companies That Engaged in Bid Signaling in D-, E-, and F-Block Auction: This Signaling May Have Contributed to Deflated Prices**

The *Second Report and Order* attempted to balance the need to provide equitable relief through a commercially reasonable solution for financially distressed licensees with the need to preserve the integrity of the Commission's rules. A number of companies, including AirGate Wireless, L.L.C. ("AirGate"), Omnipoint Corporation ("Omnipoint"), and Cook Inlet Region, Inc. ("Cook Inlet"), championed the viewpoint that preserving the integrity of the auction rules was of paramount importance, and generally advocated that the Commission should rigidly enforce its original installment payment plan.

The concept of auction integrity is broader than simply holding winning bidders to their bid amounts, though. As we noted in our Petition, we are concerned that bid signaling in the D, E, and F Block auction by certain bidders also has undermined auction integrity. This issue, which was not addressed in Opposition comments, is too serious to ignore. Already, one bidder was fined \$650,000 for allegedly violating the Commission's collusion rules.<sup>2</sup> This issue has even attracted the attention of the Department of Justice, and an investigation by this agency is ongoing.<sup>3</sup> Unfortunately, AirGate's, Omnipoint's, and Cook Inlet's view of auction integrity is misguidedly focused away from auction bidding practices.

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<sup>2</sup> See Notice of Apparent Liability for Forfeiture, In Re Applications of Mercury PCS II, LLC, FCC 97-388, (October 21, 1997). The Order found Mercury apparently violated Section 1.2105(c) by placing trailing numbers at the end of its bids that disclosed bidding strategy.

<sup>3</sup> See Memorandum Opinion and Order, FCC File Nos. 00093CWL-97 - 01319CWL-97, in the Matter of Applications of High Plains Wireless, L.P., (November 25, 1997). ("The Bureau also forwarded High Plains' Emergency Motion to the Department of Justice (DOJ), which commenced civil investigation into bidding activity in the D, E, and F block auction as well as other Commission auctions. DOJ's investigation remains ongoing.")

Attached as Appendix A are bid sheets from the Commission's D, E, and F block auction for the Ft. Pierce, FL (BTA 152), Greensboro, NC (BTA 174), Norfolk, VA (BTA 324), and Charlotte, NC (BTA 074) for rounds 135 through 188. It appears that AirGate's bids may contain trailing numbers similar to those contained in bids placed by Mercury PCS, which if determined to be the case, may be in violation of the Commission's anti-collusion rules. For example, in Round 139, AirGate placed bids in the F-Block in Ft. Pierce, Greensboro, and Charlotte that included 074, the market number for Charlotte, as the last three digits of the bid. This bid may indicate that AirGate was signaling other bidders of its intention to win the Charlotte market, which it ultimately did. Later, in Round 149, AirGate placed a bid in the F-Block in Greensboro and Charlotte that included 074 as the last three digits of the bid. This bid also was a jump bid, i.e., was placed in a market where AirGate already was the high bidder. In round 150, Urban Communicators ("Urban"), a company that was competing for the Charlotte and Greensboro markets against AirGate, placed the high bid in Greensboro. In the very next round, Round 151, AirGate topped Urban in Greensboro with a bid that included 324 as the last three digits. Market 324, Norfolk, was a market in which Urban was the standing high bidder. AirGate's bid in round 151 may have signaled, therefore, that further bidding in Greensboro by Urban might lead to a retaliation in Norfolk by AirGate.

Attached as Appendix B are bid sheets for the Atlanta, GA (BTA 024) and Miami, FL (BTA 293) F-block markets for Rounds 115 through 138. As the charts indicate, it appears that AirGate and Omnipoint may have used trailing bid numbers to signal each other and other bidders. In round 118 and 120, Omnipoint placed bids in Atlanta that

included 293 as the last three digits, which was followed by a bid in Miami in Round 123, displacing AirGate.<sup>4</sup> In Round 124, AirGate placed the high bid in Atlanta that included 293 as the last three digits. In Round 129, AirGate placed a bid in Miami that included 024 as the last three digits. Finally, in Round 135 and 137, AirGate placed bids in Atlanta that included 024 as the last three digits.

The alleged bid signaling in the D, E, and F Block auction has received national media attention. According to MSNBC, "Earlier this year, MSNBC published a computer analysis of bidding in the D, E, and F block auction which revealed several examples of unorthodox bidding by both Omnipoint and Western [an affiliate of Cook Inlet Region, Inc.] that may have involved different forms of signaling."<sup>5</sup>

In MFRI's Petition for Reconsideration, we stated that we were concerned that bid signaling in the D-, E-, and F-Block auction has undermined auction integrity. As the Commission recently noted:

Given the Commission's reliance upon auctions as a primary licensing tool, the protection of the integrity of the auction process is of paramount importance. Consequently, we are concerned about bidding practices that can have the effect of compromising the integrity of the auction process. This is particularly true with regard to behavior that violates the anti-collusion rule in Section 1.2105(c) of the Commission's Rules.<sup>6</sup>

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<sup>4</sup> This example very closely resembles the Mercury case. According to the Commission, "Reflexive bid signaling (through the use of trailing numbers) involves a bidder placing a bid in one market (market A) in which the final three digits of the bid (the trailing numbers) reflect the three-digit BTA number of a second market (market B) that it was targeting or a competing bidder was targeting. Then, within a short number of rounds, the bidder places a bid in the second market (market B) in which the final three digits of the bid reflect the first market (market A).

<sup>5</sup> See David Bowermaster, MSNBC, "FCC Bid-Rigging Probe Takes Aim; Omnipoint Being Investigated, Sources Tell MSNBC," (November 3, 1997).

<sup>6</sup> See Notice of Apparent Liability for Forfeiture, FCC 97-388, In Re Applications of Mercury PCS II, LLC, released October 28, 1997.

If the FCC truly is concerned about auction integrity, then it should investigate the possibility that AirGate and Omnipoint violated the Commission's anti-collusion rules, as interpreted in the Mercury PCS case.

As we further noted in our Petition, bid signaling, if it occurred, might partially explain the lower price paid in the D, E, and F Block auction compared with the C-Block auction. We further note that the relatively inexpensive prices paid for many D, E, and F Block licenses has undermined the value of many C-Block licenses. It would be ironic if the same companies that now oppose relief on the grounds that auction integrity would somehow compromised may have actually contributed to the financial crisis affecting many C-Block companies by themselves engaging in questionable bidding activities which may have violated the Commission's anti-collusion rules.

The truth of the matter is, AirGate, Omnipoint, and Cook Inlet appear to have confused the meaning of auction integrity. Modestly adjusting the installment payment plan is an appropriate solution for the C-Block: it has nothing to do with "auction integrity." Specifically, Part 1 of the Commission's rules address the grant of "grace periods" during which installment payments may be suspended. In part, the rules state:

**"During a grace period, a defaulting licensee could maintain its construction efforts and/or operations while seeking funds to continue payments or seek from the Commission a restructured payment plan."<sup>7</sup>**

Further, contrary to the views of some petitioners, we believe adopting a plan such as the one proposed by the Small Business Administration actually preserves auction integrity

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<sup>7</sup> 47 CFR Section 1.2110(e) (4) (ii). Emphasis added. This rule was removed in the recent Part 1 Rewrite.

by demanding that winning C-Block bidders pay every penny of principal and interest over the license term.<sup>8</sup>

**FCC Should Disregard Self-Serving  
Claims of Certain Large Businesses**

The Commission is being invited to dance the "Kill Small Business" two-step.

We are concerned that certain large bidders are attempting to game the Commission into denying relief to C-Block licensees, then opening the C-Block reauction to all bidders.

Large incumbents players such as ALLTEL, AT&T Wireless, BellSouth, Nextel, PrimeCo Personal Communications Service, and Sprint Corporation all opposed offering significant relief to C-Block licensees. If the FCC upholds the *Second Report and Order* on Reconsideration, we can be assured that the same companies will then urge the Commission to open the reauction to all participants. The Commission should recognize this anti-competitive behavior for what it is, and take steps today to avoid this result.

In comments before the Commission, Nextel Communications makes clear its goal with respect to a reauction:

At this late date, the Commission cannot expect new entrant, novice entrepreneurs to enter the broad consumer marketplace expecting to compete effectively against the likes of AT&T Wireless, Sprint Spectrum, BellSouth and Southwestern Bell and other wireless providers operating mature, established systems offering name-brand services. In this marketplace, only those companies -- large or small -- that have established themselves as providers in particular markets, or that are new entrepreneurial companies with a unique, affordable and technologically-advanced service (for which they can attract significant capital to build out their systems) can expect to put the re-auctioned spectrum to its highest and best use. Therefore, the Commission should make these licenses available to all qualified bidders.<sup>9</sup>

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<sup>8</sup> See Jere W. Glover, Chief Counsel, U.S. Small Business Administration and Jenell S. Trigg, Assistant Chief Counsel, Telecommunications, to The Honorable Reed B. Hundt, Chairman, Federal Communications Commission, *ex parte* Letter, September 8, 1997.

<sup>9</sup> See Comments of Nextel Communications, WT Docket 97-82, (November 13, 1997) at p. 8.

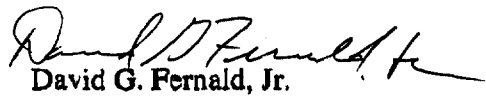
We believe this stated position is symptomatic of how entrenched telecommunications incumbents view the market and thus approach the regulatory process. It seems as if incumbents would rather consolidate, litigate and game the regulatory process rather than compete head-to-head with new market entrants. Given such actions, it is a small wonder that competition has been so slow to evolve, despite the competition mandate of the Telecommunications Act of 1996.

### **Conclusion**

The Restructuring Order did not provide C-Block licensees with any commercially reasonable alternatives, but was generally supported by companies that themselves may have violated the FCC's anti-collusion rules, as well as by entrenched incumbents, who have the most to lose by new competition.

We believe the real auction integrity issue is bid signaling. Modest relief in this docket is justified. It is expressly permitted by the rules and warranted by public policy considerations.

Respectfully Submitted,

  
David G. Fernald, Jr.

President

MFRI Inc.

110 Washington Street

East Stroudsburg, PA 18301

## **APPENDIX A**



Bids		135	136	137	138	139	140	141	142	143	144	145	146	147
Market	Bidder	F	F	F	F	F	F	F	F	F	F	F	F	F
(152) Ft Pierce, FL	AirGate					2,133,074		2,581,101						
	Devon	1,603,000		1,939,000			2,346,000		2,839,000					
	NextWave													
	NorthCoast OPCSE		1,763,063											
(174) Greensboro, NC	AirGate					2,000,074		2,420,101		2,828,000		3,543,101		4,287,000
	CMPCS													
	NorthCoast OPCSE													
	UrbanCom						2,200,000		2,662,000		3,221,000		3,897,000	
(324) Norfolk, VA	Devon													
	NorthCoast				2,690,011		3,000,111							
	OPCSE					3,000,084	3,001,084							
	UrbanCom													
(74) Charlotte, NC	AirGate					3,221,074		3,897,101		4,716,000		5,707,101		6,806,000
	NorthCoast			2,662,011										
	OPCSE				2,928,000									
	Telecorp UrbanCom				2,928,000		3,543,000		4,287,000		5,188,000		6,278,000	

Bids		148	149	150	151	153	154	155	156	157	158	160	161	162
Market	Bidder	F	F	F	F	F	F	F	F	F	F	F	F	F
(152) Ft. Pierce, FL	AirGate										3,123,000		3,778,000	
	Devon											3,435,000		4,160,000
	NextWave													
	NorthCoast													
	OPCSE													
(174) Greensboro, NC	AirGate	4,716,001	5,190,074		6,291,324									
	CMPCS													
	NorthCoast													
	OPCSE													
	UrbanCom	4,716,000	5,188,100	5,719,000										
(324) Norfolk, VA	Devon													
	NorthCoast													
	OPCSE					3,648,000	3,500,000				4,235,000		5,125,015	
	UrbanCom			3,301,000			3,301,000			3,850,000		4,659,000		5,638,000
(74) Charlotte, NC	AirGate	7,597,001	8,380,074							10,116,000				
	NorthCoast													
	OPCSE													
	Telecorp													
	UrbanCom	7,597,000	8,357,100					9,196,000						

Bids		163	164	165	166	167	168
Market	Bidder	F	F	F	F	F	F
(152) Ft Pierce, FL	AirGate						
	Devon						
	NorthWave						
	NorthCoast						
	OPCSE						
(174) Greensboro, NC	AirGate				7,612,324		9,211,111
	CMPCS						
	NorthCoast						
	OPCSE						
	UrbanCom			6,920,000		8,374,000	
(324) Norfolk, VA	Devon						
	NorthCoast						
	OPCSE	6,202,015	7,000,015			7,710,015	
	UrbanCom		6,822,000				
	AirGate						
(74) Charlotte, NC	NorthCoast						
	OPCSE						
	Telecorp						
	UrbanCom						

## **APPENDIX B**

Bids									
Market	Butler	132	133	134	135	136	137	138	
(24)Atlanta, GA	AirGals Cookinlet Mercury NorthWest NorthCoast OPCSE		20,869,292		25,268,024		30,610,024		
				18,990,000	22,968,000	27,827,000		33,681,000	
(23)Miami, FL	AirGals NorthWest NorthCoast OPCSE		20,869,000						

Bids												
Market	Bidder	115	118	120	123	124	125	126	128	129	130	131
(24) Atlanta, GA	AirGate					12,969,293						17,263,292
	Cookinlet											
	Mercury											
	NextWave			12,351,000			14,266,000			15,694,000		
	NorthCoast											
	OPCSE		12,340,293	12,293,293					15,693,000	15,692,999		
(29) Miami, FL	AirGate	22,987,112						25,362,760		33,017,024		
	NextWave											
	NorthCoast											
	OPCSE				24,150,016			27,001,016	30,015,078		37,015,080	